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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

COMMUNITY VENTURE PARTNERS, Plaintiff and Appellant, v. MARIN COUNTY OPEN SPACE DISTRICT, Defendant and Respondent.	A161851 & A162374 (Marin County Super. Ct. No. CIV 1701913)

In these consolidated appeals, Community Venture Partners (CVP) challenges postjudgment orders granting Marin County Open Space District's motion to discharge a peremptory writ of mandate and denying CVP's request for attorney fees under Code of Civil Procedure[1] section 1021.5. Because the District's return failed to satisfy the writ, we reverse the order discharging the writ. We also reverse and remand the attorney fees order so that the trial court may consider our holding regarding what was required to discharge the writ in assessing CVP's request for attorney fees under section 1021.5.

[1] All further references are to the Code of Civil Procedure unless otherwise specified.

BACKGROUND[2]

The RTMP

In 2007, Marin County adopted the Marin Countywide Plan focusing on, among other things, conserving biological resources, protecting against environmental hazards, and sustainably managing, enhancing, and expanding open spaces and trails. In 2014, the District finalized and adopted the Road and Trail Management Plan (RTMP) with the primary goals to "[e]stablish and maintain a sustainable system of roads and trails'; '[r]educe the environmental impact of roads and trails on sensitive resources, habitats, riparian areas, and special-status plant and animal species'; and '[i]mprove the visitor experience and safety for all users, including hikers, mountain bikers, and equestrians." The RTMP is, in essence, a contract between the District and the individuals, organizations, trail user groups, and public agencies that participated in its development to achieve its primary goals. In 2014, the District certified an RTMP environmental impact report (EIR).

The RTMP sets forth the decision-making process that the District utilizes to designate, manage, and maintain its road and trail system in each of its six regions. One of the RTMP's guiding principles is that "[d]esignation of the road and trail system and

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[2] We recite the facts relevant to this appeal, but also incorporate the detailed recitation of the facts set forth in our prior unpublished opinion in this matter, *Community Venture Partners v. Marin County Open Space District* (January 24, 2020, A154867) (*CVP I*).

subsequent management actions will occur through transparent and collaborative decision-making processes."

Per the RTMP, after its passage, the District would conduct initial public outreach to identify proposed projects and changes to the existing road and trail network in each of its regions. The District also conducts annual public outreach to solicit proposed projects from the public involving maintenance, major modification, new facilities, or management. The District engages in a six-step process to evaluate project proposals that compete for funding in its budget. Projects that compete are those that involve reconstruction, rerouting, active decommissioning, active road-to-trail conversion, and new construction.[3]

The District's process for competing projects is as follows: In step 1, the District solicits road and trail project proposals from the public. In step 2, the District screens proposals for consistency with the District's policies and goals (including those specified in the RTMP) and "filter[s] out" proposals that would be inconsistent with those guidelines. In step 3, proposals successfully emerging from step 2's screening are evaluated and scored to measure the proposals' potential for impacts on existing road and trail segments. Proposals that yield a net reduction, or no net increase, in a region's baseline of biophysical impacts and

[3] Project types that do not compete for budget funding include "management actions," which include changes to the types of permitted recreational activities for a trail. Proposed management actions undergo evaluation according to Steps 2 and 3 only.

that enhance visitor experience and safety are included in a "reprioritized list of road and trail projects," while projects that increase biophysical impacts are not prioritized (or may be amended and resubmitted for review). Projects that yield greater net baseline reductions after scoring with the evaluation tool in step 3 are ranked higher in the prioritized list. The end result of the step 3 scoring is a prioritized list of "unfunded" projects that compete for funding, and in step 4, the highest priority proposals are analyzed for possible inclusion in the District's budget. In step 5, County staff present proposed budgets to the County's Board of Supervisors and the District's Commission, and the public has an opportunity to provide input on the proposed budgets. Finally, in step 6, the County's Board of Supervisors and the District's Board of Directors approve the proposed budgets during public meetings. A key requirement of this process is that annually budgeted projects show a projected reduction in the previous year's baseline score of environmental impacts within the planning regions.

This Middagh Project

In March 2015, as part of the initial public outreach for Region One, the District hosted a community workshop for project proposals for the Alto Bowl Open Space Preserve. The proposal for the project at issue here—to allow bicycle use on, and to make improvements to, the Bob Middagh Trail (Middagh Project)[4]—resulted from that workshop. Other submitted

[4] This proposal was submitted by the Marin County Bike Coalition (MCBC).

proposals suggested improvements to various trails without a change-in-use or suggested that the Middagh Trail not be opened to bikes. The District scored the Middagh Project under RTMP step 3, but did not score certain competing project proposals, some of which advocated no change-in-use to the Middagh Trail. The District released a document entitled "Road and Trail Project Approval" in May 2017 approving the Middagh Project and certifying that the project conformed to the Countywide Plan and the RTMP. The same day, the District released a consistency assessment and Notice of Determination explaining that the Middagh Project did not require additional environmental review.

The Writ of Mandate and CVP I

CVP brought a CEQA challenge to the approval of the Middagh Project, and it petitioned for a writ of mandate under section 1085, asserting that the District abused its discretion in approving the Middagh Project because it failed to follow its evaluation process and failed to consider alternative competing proposals.

After a hearing, the trial court adopted its tentative decision finding in favor of CVP on the section 1085 claim (the ruling).[5] The court found that certain proposals the District

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[5] CVP's CEQA claims contended that the District violated CEQA by approving the Middagh Project in November 2016 before the District evaluated its environmental effects and by failing to adequately analyze potential user conflicts between mountain bikers and other users of the Middagh Trail. The trial court ruled that the District violated CEQA by failing to conduct an initial study before what the court deemed the project's

neglected to consider suggested physical changes without a change-in-use, and the District failed to show why those proposals could not be scored and evaluated under the RTMP. It ruled that the District acted arbitrarily and capriciously by violating its own evaluation rules and failing to score eligible proposals. "For these reasons, the court grants the petition for traditional mandate under [section 1085] and orders the District to set aside its Notice of Determination approving the Middagh Trail Improvement Project until the District has evaluated these competing proposals as required by the Trail Plan." The court authorized CVP to prepare a judgment and peremptory writ of mandate (the writ). At the conclusion of the writ hearing, the District told the court that most of the Middagh Project had to do with physical trail improvements and inquired whether the District had to refrain from completing the approved improvements. The court responded that it was not requiring the District to undo or halt completion of physical changes, and the parties should clarify that in the judgment.[6]

November 2016 approval, and, even assuming the project approval occurred later, the District nonetheless violated CEQA because the consistency assessment failed to address reasonably foreseeable social effects on existing users of the Middagh Trail. In *CVP I*, this court reversed the judgment with respect to the CEQA claims.

[6] The judgment also allowed the District to complete physical improvements to the Gasline Trail, another trail in the Alto Bowl Open Space Preserve, under the Gasline Trail Project. The District approved the Gasline Trail Project along with the Middagh Project.

The parties were unable to agree on the language of a proposed judgment and writ. Both agreed the judgment should incorporate the ruling and should state that a writ would issue requiring the District to "set aside" its "approval of the Bob Middagh Trail and Gasline Trail Project with respect to the District's decision to allow bikes on the Middagh trail." CVP sought to add that the District's "selection of the [MCBC] proposal to open the [Middagh Trail] to mountain bike use as the project selected under the District's 2014 [RTMP] scoring system" was also set aside. In a letter to the court, the District opposed including CVP's proposed language because it was "an additional, gratuitous provision . . . adding that the court specifically sets aside the District's selection of the MCBC proposal." The District explained, "The Tentative Ruling sets aside the approval of the Project until the competing proposals are scored. There is no reason to add to that ruling an additional provision noting that the proposal the District originally chose in approving the Project was from MCBC. The Tentative Ruling is attached and incorporated into the District's proposed judgment/order as well as [CVP's]. The District is well aware that it must comply with the provisions of the Tentative Ruling adopted by the court, as clarified by the court at oral argument. [¶] It appears [CVP] seeks to add the additional language in the hope that its inclusion might support [CVP's] future meritless argument that the MCBC proposal should be eliminated from consideration. That, however, would be in direct contradiction to the court's ruling

that includes, not excludes, competing proposals for consideration."

The court entered the District's proposed judgment. The final judgment attached the court's ruling and provided, "A Peremptory Writ of Mandate ('Writ') shall issue under seal of the Court, ordering [the District] to set aside its approval of the Bob Middagh and Gasline Trail Project with respect to the District's decision to allow bikes on the Middagh trail. The Writ's order setting aside the approval of the Project is limited to the use of bicycles on the Bob Middagh trail; trail modifications approved and made to the Bob Middagh and Gasline trails may remain and may be completed." The issued writ of mandate contained identical language requiring the District to set aside its project approval "with respect to the District's decision to allow bikes on the Middagh trail."

The District appealed. On the section 1085 claim, we found the trial court correctly concluded that some of the unscored proposals submitted in response to the March 2015 workshop for Region One were scorable under the RTMP because they included reconstruction and rerouting components.[7] "By failing to score

[7] We listed a proposal from the Mill Valley Homeowners' Association that sought to update a heavily-used fire road, including widening, stabilizing, and constructing wide step switchbacks on deeply eroded trails; an Orth/Meadowcrest Homeowners Association proposal advocating (among other things) the installation of horse-friendly steps on the trails connecting Horse Hill Trail to the Middagh Trail and surfacing the Alto Bowl Fire Road and Middagh Trail with crushed granite; and a proposal by Friends of Marin Open Space to reroute a

certain proposals that met its criteria for competing in the evaluation process, the District failed to adhere to its own rules governing the assessment of project proposals. This amounted to an abuse of discretion." We further found that "the omission of scoreable proposals . . . , such as the above-described proposals that advocated reconstruction and rerouting, also demonstrates that the District's evaluation of proposals was arbitrary." We thus affirmed the portion of the judgment granting CVP mandamus relief under section 1085.

Proceedings on Remand

On remand, CVP moved for attorney fees under section 1021.5 (the fee motion),[8] and a debate emerged between the parties regarding whether the writ required the District to set aside its approval of the Middagh Project at all. The District took the position that all it had to do to comply with the writ was to score previously unscored, "unrelated" project proposals that were scorable, and this scoring had "no impact" on the District's decision regarding the change-in-use in the Middagh Project "in any way." In support, the District pointed out the court had previously rejected CVP's proposed judgment in the case, which the District characterized as going "beyond" the ruling in that it included language requiring the District to set aside its selection

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section of the Horse Hill Trail and to remediate the trail by continuing foot use only.

[8] After remand, the case was reassigned, and the trial judge who rendered the orders at issue in this appeal was not the judge who presided over the writ proceedings and authored the prior ruling.

of the MCBC proposal as the "winner" of the RTMP process. The District argued that CVP's claims regarding the change-in-use aspect of the Middagh Project pertained only to the CEQA violations, and "neither CVP's claims nor the court's judgment ever addressed whether District's process of evaluating the change-in-use proposal violated the RTMP."

CVP disagreed, arguing, "To open up the trail to biking, the District will have to reconsider its prior decision in compliance with the Trail Plan, including consideration of competing proposals for the trail and surrounding area that do not change the long time equestrian and hiking use on the trail." That the District had to reevaluate the change-in-use and fix the process, CVP argued, enforced an important public right and conveyed a substantial public benefit to a large group in that it rendered the possibility of a different result.

The trial court denied the fee motion. It found that CVP was not "successful" under section 1021.5 because CVP did not achieve its primary litigation objective to force the District to re-evaluate the environmental effects of the Middagh Project. Even if CVP were a successful party, the court found that it failed to show the enforcement of an important public right or a significant benefit conferred on the general public or a large class of persons. The court stated, "The ultimate 'success' on [CVP's] action was the finding that the District's failure to evaluate 'No Change-in-Use' proposals was arbitrary and capricious, pursuant to [section 1085] and violated the District's own mandatory evaluation methodology, constituting an abuse of discretion."

The court reasoned that merely achieving additional procedural considerations failed to constitute enforcement of an important public right. "The requirement of the District to 'score' those proposals that were not considered during the evaluation process did not 'overturn, remedy or prompt a change in the state of affairs' challenged by [CVP]. [Citation.] The minor change to the District's conduct is insufficient to be considered a substantial benefit to a large class of persons. [Citation.]"

The District then filed a motion to discharge the writ. It submitted a declaration from its Resource Specialist, Jason Hoorn, stating that the District had identified previously unscored proposals and had scored them with the evaluation tool according to the baseline conditions that existed when the proposals were submitted and those currently existing. Hoorn "integrated those proposals that would yield a net reduction, or no net increase, to the baseline of biophysical impacts (i.e., a zero or negative biophysical impact score), and that enhance visitor experience and safety into District's list of potential road and trail projects," and he submitted the scoring analysis and list with his declaration. Hoorn concluded, "These proposals will now compete for funding with other proposals and District priorities as required by the RTMP." The District claimed the writ should be discharged because it was only "required to evaluate—i.e., 'score'—other unrelated proposals submitted by the public pursuant to one of the steps in its internal project proposal evaluation process," and it had done so. The District maintained that the writ did not require it to set aside its Notice of

Determination for the Middagh Project *or* its approval of the Middagh Project.[9]

In opposition, CVP argued the return was deficient because the District did not set aside the Middagh Project approval as it pertained to bike use. CVP contended it had challenged how the District selected the Middagh Project, and the District had to revisit the selection process if it wished to reapprove the Middagh Project with respect to bike use.[10]

The trial court granted the District's motion. After framing one of the questions before it as whether the District was required to set aside its Notice of Determination approving the Middagh Project, it found that, since a Notice of Determination was a CEQA document, the writ no longer required the Notice of Determination approving the project to be set aside. It ruled, "The requirement of the District to 'score' the unscored proposals was limited to those proposals raised in the Writ and modified by the Court of Appeal in its opinion. The Court of Appeal affirmed the aspect of the [judgment] requiring the District to score certain project [proposals] and nothing more. Now that the projects are scored, consistent with the RTMP, they will be included on a list for consideration."

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[9] The District's notice of motion indicates it intended to rely on a "Return on Writ," but this court has not located any such document in the District's appendices.

[10] CVP also argued that the District had to score and consider new proposals submitted after the Middagh Project improvements were finished. The trial court rejected this argument, and CVP does not pursue it on appeal.

DISCUSSION

I. Discharge of the Writ

A. Standard of Review

"On appeal from an order discharging a writ, the issue is whether the trial court erred in ruling that the respondent . . . complied with the writ." (*Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1355.) "Thus, our focus is on the District's response to the writ and the trial court's assessment of that response." (*Ibid.*)

However, this appeal also implicates the meaning of the trial court's section 1085 ruling and writ. The District contends the court that issued the ruling and writ is in the best place to interpret it, and urges us to defer to the interpretation of the ruling and writ in the postjudgment motions. But the judge who issued the ruling and writ was not the same judge who issued the postjudgment orders, and the ruling and judgment were subject to our affirmance. In these circumstances, we believe the interpretation of the meaning of the ruling and writ is subject to our de novo review. (*In re Ins. Installment Fee* (2012) 211 Cal.App.4th 1395, 1429 [meaning of a court order or judgment is a question of law]; *American Civil Rights Foundation v. Los Angeles Unified School Dist.* (2008) 169 Cal.App.4th 436, 448 [interpretation of superior court order subject to de novo review]; see *POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 63 [reviewing interpretation of writ de novo where previous appellate opinion ordered the writ be issued].)

B. Analysis

CVP contends that the trial court erred by discharging the writ without requiring the District to set aside the Middagh Project approval with respect to bike use. Specifically, it argues that the ruling and judgment below set aside the approval until the District revisited its decision to select the Middagh Project over previously unconsidered proposals without a change-in-use.[11] The District, on the other hand, claims the only relief sought and ordered on the section 1085 claim was for the District to score prior unscored proposals, and the ruling's language requiring the approval be set aside applied only to the CEQA claim. The District claims this is so for two reasons: (1) the ruling stated the "Notice of Determination approving the [Middagh Project]" should be set aside, a Notice of Determination is a CEQA document, and therefore the set-aside language applies only to the CEQA remedy; and (2) the writ does not require the District to compare the unscored proposals to the Middagh Project change-in-use because the District's selection of the Middagh Project was never challenged. As explained below, both of the District's arguments are unconvincing.

The record shows that the ruling's set-aside language applies to CVP's section 1085 claim. First, the ruling is split into sections that separately address the CEQA claims and the section 1085 claim. After discussion of the facts, law, and analysis

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[11] CVP's position is that the ruling and resulting judgment on their own temporarily set aside approval of the Middagh Project with respect to bike use.

pertaining to the section 1085 claim, that section ends, "For these reasons, the court grants the petition for traditional mandate under [section 1085] and orders the District to set aside its Notice of Determination approving the Middagh Trail Improvement Project until the District has evaluated these competing proposals as required by the Trail Plan." The trial court used the term "Notice of Determination," but the quoted sentence clearly concludes the ruling on the section 1085 claim. Next, CVP prayed for a writ of mandate ordering the District to "set aside [its] decision to approve the Bob Middagh Trail until such time as the District had complied with CEQA *and the Trail Plan*" (italics added), and the judgment and writ ordered the District to set aside its "approval" of the Middagh Project with respect to the bike use. Further, when urging the court to select its proposed judgment, the District acknowledged that the ruling set aside "the approval of the [Middagh] Project" until, as the District interpreted it, the scoring of competing proposals. Thus, it appears the court inadvertently used the phrase "Notice of Determination," but its ruling on the section 1085 claim requires the District to set aside its "approval" of the Middagh Project. It is this ruling that we affirmed.[12]

The resolution of this appeal, however, does not stop with our conclusion that the language in the ruling requiring the District to set aside approval of the Middagh Project applies to

[12] Given the record in this case, even if a more deferential standard were applied to the trial court's postjudgment interpretation of the ruling, we would reach the same conclusion.

the section 1085 claim. That is because the ruling below, which we affirmed on appeal, ordered that the approval be set aside "*until the District has evaluated the competing proposals as required by the Trail Plan*." The District could therefore satisfy the writ through a return showing that it had set aside the approval until it complied with the RTMP process with respect to evaluation of all scorable projects that compete, including the Middagh Project. (See *City of Carmel-by-the-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 970, 972 [judgment directing issuance of a writ ordering board of supervisors to "set aside" its approval of a use permit "unless and until [the Board] adopts findings . . . that the use permit . . . is consistent with the general plan requirements and the [Office of Planning and Research] conditions" required board to set aside approval of permit or adopt the findings].) The question, then, is whether the District established through its return that it set aside its approval until it "evaluated the competing proposals as required by the Trail Plan."

To answer that question, we first review what is necessary to evaluate competing project proposals under the RTMP. As explained above, the RTMP evaluation process includes: solicitation of project proposals; screening of proposals for policy consistency; scoring proposals with the evaluation tool, comparing them to one another and the existing environment, identifying the proposals that reduce environmental impacts, improve visitor experience, and/or improve visitor safety; and producing a conceptual map of proposed projects and actions that

will constitute adjustments to the designated trail system, as well as a prioritized list of project proposals. Under the RTMP, staff must consider the scoring information and compare the proposed projects *before* creating a list of prioritized projects and *before* a discretionary selection of a prioritized project for inclusion in a proposed budget, if any. These steps are all part of the RTMP evaluation process. In *CVP I*, we found that the District's failure to score and consider projects that were eligible to compete for funding resulted in an arbitrary evaluation of the projects that were considered. CVP is thus correct that the affirmed ruling and writ require the District to set aside the approval at issue until the District evaluates the previously unscored competing projects for policy consistency and scores them; those projects and the Middagh Project would then have to be compared to one and other and prioritized before any project is selected for implementation.[13] Indeed, the District acknowledged as much below when it wrote that the ruling required it to include the unscored competing projects *and* the Middagh Project in its future consideration.

The District now argues that the ruling and writ do not require it to compare the previously unscored proposals against the Middagh Project's change-in-use because the District's

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[13] The District contends that nothing in the ruling requires it to "select" a certain project proposal because nothing in the RTMP requires the selection of a particular project after RTMP steps 1 through 3. We agree the RTMP does not mandate that the District select any particular project after step 3. However, where the District elects to move forward with a particular project, it must follow the RTMP process prior to that selection.

selection of the Middagh Project was never challenged, but that is incorrect. CVP's writ petition alleged, "*In approving the Project*, the District disqualified six proposals . . . to rehabilitate and improve the condition of the Bob Middagh Trail despite the fact that each proposal qualified as either a reconstruction or rerouting of the trail." (Italics added.) "The District's *failure to consider* project proposals meeting the criteria for new projects as set forth in the Trail Plan for consideration violates the Trail Plan and results in the District never considering . . . the option of *not* adding bikes to the Bob Middagh Trail while at the same time improving the environmental impacts of that trail usage. This result is arbitrary and violates the Trail Plan." (Italics added.) The "result" challenged was the District's approval of the Middagh Project without considering any of the no-change-in-use alternatives that improved environmental impacts.

We address one additional issue pertinent to a writ return in this case. The District mentions that returning the Middagh Project and the unscored competing projects to square one is not possible given subsequent events. The Middagh Project packaged a change-in-use with physical trail improvements, including those that would render the Middagh Trail safe for bike use. In the proceedings below, CVP did not oppose the completion of the physical improvements, and they have since been finished.[14]

[14] The same is true for improvements, including decommissioning of the old trail and rerouting, made to the Gasline Trail that was the subject of certain improvements suggested in the unscored Orth/Meadowcrest and Mill Valley Homeowners' Association project proposals identified in *CVP I*.

Thus, there is no longer a reconstruction component to the Middagh Project that would require it to compete for funding under the RTMP, and the change-in-use alone is a "management action" that does not compete. Accordingly, to the extent CVP contends that, if selected anew, the Middagh Project must complete the RTMP process from the point of incorporation into a proposed budget and beyond, such contention is not feasible. It is, however, possible for the District to follow the writ's command that the project approval be set aside as it pertains to the change-in-use until the District adheres to steps 2 and 3 for the previously unscored projects that qualified to compete under the RTMP, then compares and considers those projects along with the Middagh Project before selecting the Middagh Project's change-in-use should it again decide to do so.

Measured against what the writ required, the District's return was insufficient by any standard. The District scored certain previously unscored project proposals with its evaluation tool, identified those that resulted in a net reduction, or no net increase, in biophysical impacts and that enhance visitor experience and/or safety, and integrated those proposed projects into the prioritized list for future consideration.[15] However, there is no evidence the District compared the information rendered for

[15] In its scoring, the District considered the baseline situation as it stood prior to implementation of the improvements of the Middagh and Gasline Projects and the baseline situation thereafter. CVP does not challenge the manner in which the District scored the previously unscored competing projects, or the results submitted along with the Hoorn declaration.

the previously unscored projects along with the Middagh Project, and, after considering the relevant information, elected to proceed with implementation of the change-in-use aspect of the Middagh Project. As such, the District did not demonstrate that its evaluation of the competing proposals complied with the RTMP, and the District remains subject to the command that Middagh Project's change-in-use be set aside until it does so.

II. Attorney Fees

"Section 1021.5 'codifies the "private attorney general" doctrine of attorney fees articulated in *Serrano v. Priest* (1977) 20 Cal.3d 25, and other judicial decisions. [Citation.]' [Citation.] The statute gives the trial court discretion to award fees to a successful party if (1) its action has resulted in the enforcement of an important public right, (2) the general public or a large class of persons has received a significant benefit, (3) the burden of private enforcement is disproportionate to the litigant's personal interest, and (4) it is unfair to make a successful plaintiff pay the fees out of any recovery." (*Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329, 334 (*La Habra*).)

The term "successful party" in section 1021.5 is synonymous with the term "prevailing party" used in other fee-shifting statutes. (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 570.) In order to effectuate the purpose of section 1021.5, courts "have taken a broad, pragmatic view of what constitutes a 'successful party.'" (*Id.* at p. 565.) Plaintiffs may be considered successful if they " ' " ' "succeed[] on any significant issue in litigation which achieves some of the benefit the parties

sought in bringing suit.” ’ ” ’ ” (*Sweetwater Union High School Dist. v. Julian Union Elementary School* (2019) 36 Cal.App.5th 970, 982 (*Sweetwater*).) To decide whether an important public right has been enforced, the trial court “must realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory.” (*Woodland Hills Residents Assn. v. City Council* (1979) 23 Cal.3d 917, 938.) To discern whether a significant benefit has been bestowed on the general public or a large class of persons, the trial court determines the significance of the benefit, as well as the size of the class receiving the benefit, “from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.” (*Id.* at p. 940.)

Whether plaintiff established its eligibility for fees under section 1021.5 implicates “a mixed standard of review: To the extent we construe and define the statutory requirements for an award of attorney’s fees, our review is de novo; to the extent we assess whether those requirements were properly applied, our review is for an abuse of discretion.” (*La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1156.)

We agree with CVP’s assertion that the trial court’s findings that CVP was not a successful party, did not enforce an important public right, and did not bestow a significant benefit on a large group of people were premised on an erroneous

interpretation of the ruling and writ. The District argued in its fee motion that the writ only required it to score the unrelated project proposals, and this scoring had "no impact" on its prior approval of the Middagh Project. In its order, the trial court described the relief sought by CVP under section 1085 to be "for the District to 'score' the seven other proposals determined to be 'non-scorable,' " and similarly described the writ as merely "requiring the District to score those proposals that were not considered during the evaluation process." The court found that "the requirement of the District to score those proposals that were not considered during the evaluation process fails to vindicate an 'important public right' and did not " 'overturn, remedy, or prompt a change in the state of affairs' challenged by [CVP]." The trial court is in the best position to, and must, "realistically and pragmatically evaluate the impact of the litigation to determine if the [section 1085's] requirements have been met." (*La Habra, supra,* 131 Cal.App.4th at p. 334.) In this case, the trial court's assessment of the litigation's impact rested upon an erroneous interpretation of the writ and ruling. We shall therefore reverse and remand so that the trial court may exercise its discretion with the benefit of our holding as to what the writ required the District to do.

Reversal and remand are also warranted because the trial court appears to have used the wrong legal standard to assess whether CVP was a successful party. (*569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 434 [use of wrong legal standard constitutes abuse of

discretion].) We acknowledge that the trial court quoted *Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, 178 and the correct rule that a party is successful when it has " 'succeed[ed] on any significant issue in the litigation which achieves some benefit the parties sought in bringing suit.' " However, it went on to rule that CVP was not a "successful party" solely because CVP did not obtain its "primary litigation objective . . . to force the District to re-evaluate the environmental effects of its approval of the project," and the relief CVP sought for its section 1085 claim was only a "minor portion of [its] litigation objective."

Courts have observed that language referring to whether the plaintiff obtained its "primary" litigation aim, or the "*primary* relief sought" comes from catalyst cases where the plaintiff must have obtained the primary relief sought to obtain fees. (*Lyons v. Chinese Hospital Assn.* (2006) 136 Cal.App.4th 1331, 1346; *Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 878 [court applied wrong standard in catalyst case when it failed to find plaintiff obtained primary relief sought and instead found plaintiff obtained some success on a significant issue which achieved some of benefit sought]; *Sweetwater*, *supra*, 36 Cal.App.5th at p. 986 [where party was successful under non-catalyst theory, "no need" to address argument party did not accomplish its primary litigation aim because this inquiry is relevant only in catalyst cases].) This is not a catalyst case, so the standard is whether CVP succeeded on any significant issue

in the litigation which achieves some benefit it sought in bringing suit.[16]

DISPOSITION

The order discharging the preemptory writ of mandate is reversed. The trial court is directed to vacate that order and enter a new order (1) stating the District's return did not demonstrate compliance with the peremptory writ of mandate; (2) denying the District's request for an order discharging the writ; and (3) ordering the District to comply with the writ as affirmed in *CVP I*. The order denying attorney fees is reversed and remanded for a redetermination of whether CVP is entitled to attorney fees pursuant to section 1021.5.

BROWN, J.

WE CONCUR:

POLLAK, P. J.
STREETER, J.

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[16] Nothing in this opinion shall be construed as implying that the trial court should award attorney fees. This matter is being remanded solely for the trial court to exercise its discretion according to the applicable legal standards and in light of our ruling clarifying what the ruling and writ at issue here required after our affirmance of the section 1085 claim.